



## INTERGOVERNMENTAL DECISION-MAKING PROCEDURES

In the Common Foreign and Security Policy, as well as in several other fields such as enhanced cooperation, certain appointments and treaty revision, the decision-making procedure is different from that prevailing in the ordinary legislative procedure. The dominant feature in these fields is a stronger component of intergovernmental cooperation. The challenge of the public debt crisis has provoked an increased use of such decision-making mechanisms, notably in the framework of European economic governance.

### LEGAL BASIS

Articles 20, 21-46, 48 and 49 of the Treaty on European Union (TEU); Articles 2(4), 31, 64(3), 81, 89, 103(1), 113, 115, 118, 127, 153, 191(3), 192, 194 (2), 215, 218, 220, 221, 312, 329 and 333 of the Treaty on the Functioning of the European Union (TFEU).

### DESCRIPTION

#### A. Procedure for amendment of the Treaties (Article 48 TEU)

- Proposal: any Member State, Parliament or the Commission;
- Commission's role: consultation and participation in the intergovernmental conference;
- Parliament's role: consultation before the intergovernmental conference is convened (the conferences themselves involve Parliament on an ad hoc basis but with increasing influence: for some time it was represented by either its President or two of its Members; at the most recent intergovernmental conference it provided three representatives);
- Role of the Governing Council of the European Central Bank: consultation in the event of institutional changes in the monetary field;
- Decision: common accord of the governments on amendments to the Treaties, which are then put to the Member States for ratification in accordance with their constitutional requirements; before that, a decision by the European Council is required, by a simple majority, on whether or not to convene a Convention, following the consent of Parliament.

#### B. Procedure for the activation of passerelle clauses

- European Council: activates and decides, unanimously, on the use of the general passerelle clause (Article 48 TEU) and the specific passerelle for the Multiannual



Financial Framework (Article 312 TFEU). Any national parliament has a right of veto for the general clause;

- Council: other bridge clauses can be decided by the Council, acting unanimously or by qualified majority, depending on the relevant treaty provision (Article 31 TEU, Articles 81, 153, 192 and 333 TFEU).

#### **C. Accession procedure (Article 49 TEU)**

- Applications: from any European state which complies with the Union's principles (Article 2 TEU); notification of national parliaments and European Parliament; the European Council agrees on conditions of eligibility;
- Commission's role: consultation; it plays an active part in preparing and conducting negotiations;
- Parliament's role: consent, by an absolute majority of its component Members;
- Decision: by the Council, unanimously; the agreement between the EU Member States and the applicant state, setting out the terms of accession and the adjustments required, is put to all the Member States for ratification in accordance with their constitutional requirements.

#### **D. Withdrawal procedure (Article 50 TEU)**

- Request: the Member State concerned notifies the European Council of its intention, in accordance with its own constitutional requirements;
- Conclusion: takes the form of a withdrawal agreement concluded by the Council after obtaining the consent of Parliament, and acting by a special qualified majority (Article 238(3)(b) TFEU); this is defined as 72% of the members of the Council representing the participating Member States (i.e. excluding the state concerned), comprising at least 65% of the population of these Member States.

#### **E. Sanctions procedure for a serious and persistent breach of Union principles by a Member State (Article 7 TEU)**

##### **1. Main procedure**

- Proposal for a decision determining the existence of a serious and persistent breach: one third of the Member States, or the Commission;
- Parliament's consent: adopted by a two-thirds majority of the votes cast, representing a majority of its Members (Rule 83(3) of Parliament's Rules of Procedure);
- Decision determining the existence of a breach: adopted by the European Council, unanimously, without the participation of the Member State concerned, after inviting the State in question to submit its observations on the matter;
- Decision to suspend certain rights of the Member State concerned: adopted by the Council by a qualified majority (without the participation of the Member State concerned).



2. The Treaty of Nice supplemented this procedure with a precautionary system
  - Reasoned proposal for a decision determining a clear risk of a serious breach of Union principles by a Member State: on the initiative of the Commission, Parliament or one third of the Member States;
  - Parliament's consent: adopted by a two-thirds majority of the votes cast, representing a majority of its component Members;
  - Decision: adopted by the Council by a four-fifths majority of its members, after hearing the Member State in question. The Council can address recommendations to the Member State before taking such a decision.

#### F. Enhanced cooperation procedure

##### 1. General rules (Article 20 TEU, Article 329(1) TFEU)

- Proposal: exclusive right of the Commission; Member States which intend to establish enhanced cooperation can address a request to the Commission to that effect;
- Parliament's role: consent;
- Decision: by the Council, acting by a qualified majority.

##### 2. Cooperation in the field of the CFSP (Article 329(2) TFEU)

- Application to the Council by the Member States concerned;
- Proposal forwarded to the High Representative of the Union for Foreign Affairs and Security Policy (HR), who gives an opinion;
- Information of Parliament;
- The Council acts on the basis of unanimity.

A similar procedure exists for initiating a structured cooperation in defence policy introduced by the Treaty of Lisbon ([5.1.2](#)).

#### G. Procedure for decisions in foreign affairs

The Treaty of Lisbon abolished the three-pillar structure of the previous treaties but kept foreign policy separate from the other EU policies. The objectives and provisions of the CFSP are included in the Treaty on European Union. They are now better drafted and more coherent than in the previous treaties.

A major institutional change is the creation of the office of the HR, who is assisted by a new European External Action Service and can propose initiatives under the CFSP. The CFSP has been integrated into the Union framework but follows specific rules and procedures (Article 24(2) TEU).

- Proposal: any Member State, the HR or the Commission (Article 22 TEU);
- Parliament's role: regularly informed by the Presidency and consulted on the main aspects and basic choices. Under the interinstitutional agreement on financing the CFSP, this consultation process is an annual event on the basis of a Council document;



- Decision: European Council or Council, acting unanimously. The European Council defines the priorities and strategic interests of the EU; the Council takes decisions or actions. The HR and the Member States put these decisions into effect, making use of national or Union resources. The President of the European Council can convene an extraordinary meeting of the European Council if international developments so require.

#### H. Other legislative measures ([2.6.8](#))

Intergovernmental decision-making is also maintained in a number of specific, politically sensitive areas of EU policy, in particular:

- Justice and home affairs: measures regarding judicial cooperation in criminal matters, judicial cooperation (Article 89 TFEU);
- The internal market: restrictions on movement of capital (Article 64(3) TFEU), competition policy (Article 103(1) TFEU), tax harmonisation measures (Article 113 TFEU), approximation of laws affecting the establishment of the internal market (Article 115 TFEU), intellectual property rights (Article 118 TFEU);
- Monetary policy: conferral of specific prudential supervision tasks on the ECB (Article 127 TFEU);
- Other policy fields such as social policies and employment (Article 153 TFEU), energy (Article 194(2) TFEU) or environment (Article 191(3) TFEU).

#### I. Financial crisis management ([2.6.8](#))

The advent of grave financial difficulties in some Member States in 2010 has made it necessary to come to their rescue in different guises. Some components of the aid package are managed by the Union, for instance the European Financial Stabilisation Mechanism. The major part, notably the contributions to the European Financial Stability Facility (EFSF), is paid directly by the Member States. The EFSF is a ‘special-purpose vehicle’ created by an intergovernmental agreement among the euro area Member States. The decisions required for such intergovernmental measures have therefore had to be taken at the level of the European Council, or of the Heads of State or Government of the Eurogroup, including ratification in the Member States according to their national constitutional requirements. Two important reasons for this development are the no-bail-out clause (Article 125 TFEU) and the resistance of some national constitutional courts to a further transfer of financial and budgetary powers to the European Union.

An amendment to Article 136 TFEU (economic policy coordination) was adopted by the European Council on 25 March 2011, under the simplified treaty revision procedure, without convening a Convention (European Council Decision 2011/199/EU). It entered into force in April 2013, thus enabling permanent crisis prevention mechanisms such as the European Stability Mechanism (ESM) to come into operation. The latter was created by an intergovernmental treaty between the members of the euro area, which entered into force on 27 September 2012. Voting procedures on its executive board include a so-called ‘emergency procedure’ which provides for a qualified majority of 85% if the Commission and the ECB conclude that an urgent decision related to financial assistance is needed. Finally, an international Treaty on Stability, Coordination and



Governance in the Economic and Monetary Union has been drawn up by Member State governments, and entered into force on 1 January 2013, after 12 contracting parties whose currency is the euro deposited their instrument of ratification.

#### J. Appointments

- The European Council, acting by a qualified majority, appoints the President, the Vice-President and the other four members of the Executive Board of the European Central Bank, on a recommendation by the Council and after consulting Parliament (Article 283(2) TFEU);
- The European Council, acting by a qualified majority and with the agreement of the President of the Commission, appoints the High Representative of the Union for Foreign Affairs and Security Policy (Article 18(1) TEU); in his/her capacity as a Vice-President of the Commission, the HR is nevertheless subject to consent by Parliament on the Commission as a whole;
- The Governments of the Member States appoint by common accord the judges and advocates-general of the Court of Justice and the General Court (formerly the Court of First Instance) (Article 19(2) TEU);
- The Council appoints the Members of the Court of Auditors by qualified majority, on the recommendation of each Member State and after consulting Parliament (Article 286(2) TFEU).

## ROLE OF THE EUROPEAN PARLIAMENT

In the run-up to the 1996 Intergovernmental Conference, Parliament had already called for 'communitisation' of the second and third pillars, so that the decision-making procedures applicable under the Treaty establishing the European Community would also apply to them.

Following Parliament's continued efforts during the European Convention to make the former second and third pillars part of the Union's structure (1.1.4), the Treaty of Lisbon extended supranational decision-making to the former third pillar (justice and home affairs) and introduced a coherent institutional framework for foreign and security policy, with important innovations such as the long-term President of the European Council and the position of High Representative of the Union for Foreign Affairs and Security Policy.

In a context of increasing inter-governmentalisation of economic and fiscal governance, Parliament played its part in ensuring appropriate participation of the EU institutions in the negotiations on the international treaty mentioned above in section I.

In February 2019, Parliament adopted a resolution on the implementation of the Treaty provisions concerning enhanced cooperation<sup>[1]</sup>, in which it issued recommendations for the future evolution of enhanced cooperation. In particular, Parliament considered it necessary to devise a procedure for the fast-track authorisation of enhanced cooperation in fields of high political salience to be accomplished within a shorter

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[1] [European Parliament resolution of 12 February 2019 on the implementation of the Treaty provisions concerning enhanced cooperation \(Texts adopted, P8\\_TA\(2019\)0077\)](#).



timeframe than the duration of two consecutive Council presidencies. It also called on the Commission to propose a regulation to simplify and unify the relevant legal framework for enhanced cooperation.

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